

**2003 DRAFTING REQUEST****Bill**Received: **02/18/2003**Received By: **gmalaise**Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC 7-9485**By/Representing: **Anne Sappenfield**This file may be shown to any legislator: **NO**Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Children - out-of-home placement**

Extra Copies:

Submit via email: **YES**Requester's email: **anne.sappenfield@legis.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Relative caregivers

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P2	gmalaise	kfollett	jfrantze	_____	sbasford		S&L
	02/20/2003	02/26/2003	03/04/2003	_____	03/04/2003		Crime
		kfollett		_____			
		02/28/2003		_____			
/1	gmalaise	kfollett	jfrantze	_____	sbasford	lemery	S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	03/17/2003	03/18/2003	03/18/2003 _____		03/18/2003	03/19/2003	Crime

FE Sent For:

At intro.

&lt;END&gt;

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		kfollett 02/28/2003					

11 KJF 3/18  
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1/	gmalaise	1/1 kjf 2/18					
2		2/28 pg 1c conversion					
		3/3/03					

FE Sent For:

**<END>**

1       **AN ACT** *to repeal* 48.57 (3p) (h) 5.; *to renumber* 48.57 (3m) (am) 2.; *to renumber*  
2       *and amend* 48.57 (3m) (d) and 48.57 (3n) (d); *to amend* 48.57 (3m) (am) 1., 48.57  
3       (3m) (am) 4. and 4m., 48.57 (3m) (g) 2., 48.57 (3n) (am) 4. and 4m., 48.57 (3n) (g)  
4       2., 48.57 (3p) (d), 48.57 (3p) (e) 4., 48.57 (3p) (fm) 1m., 48.57 (3p) (fm) 2., 48.57  
5       (3p) (fm) 2m., 48.57 (3p) (g) (intro.), 48.57 (3p) (h) 1., 48.57 (3p) (h) 3. (intro.), a.  
6       and c., 48.57 (3p) (hm), 49.155 (5) and 880.08 (3) (am) (intro.); *to repeal and*  
7       *recreate* 48.57 (3p) (h) 2. and 48.57 (3p) (h) 4.; and *to create* 48.57 (3m) (am) 1. b.,  
8       48.57 (3m) (d) 1., 2. and 3., 48.57 (3n) (d) 1. and 2., 48.57 (3r), 48.979 and 49.155  
9       (5) (c) and (d) of the statutes; **relating to:** the kinship care program, notice of  
10       guardianship proceedings, creating a medical services consent form, and requesting  
11       the joint legislative council to study guardianship and legal custody.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**JOINT LEGISLATIVE COUNCIL PREFATORY NOTE:** This bill draft was prepared for the Joint Legislative Council's Special Committee on Relative Caregivers. The special committee was directed to study: (1) current law relating to relative caregivers under the Children's Code and under current law relating to guardianship and kinship care; (2) relatives who care for children under an informal agreement between the child's parent and the relative and whether such relatives should be granted decision-making authority with respect to the child's care; and (3) third-party visitation law and enforcement of third-party visitation orders.

The bill draft does the following:

1. Makes the following changes to current law relating to the kinship care program:
  - Modifies the eligibility criteria so that a child does not need to be a child or juvenile in need of protection or services (CHIPS or JIPS) in



order for a kinship care relative to receive payments. In addition, a county department or, in Milwaukee County, the department of health and family services (DHFS) must find, for purposes of determining eligibility for kinship care payments, that a child needs to be placed with the relative if the child is CHIPS or JIPS or if the child has lived with the relative for 2 years or longer and the placement is voluntary and appropriate.

- Limits the arrests that a county department or DHFS may consider in conducting a criminal background check for purposes of kinship care payment eligibility to arrests for which a criminal charge is pending.
- Requires a county department or DHFS to provide notice of discontinuation of kinship care payments to a relative at least 10 days before the payments are to be discontinued along with notice of the relative's rights to appeal the discontinuation and to receive payments pending a hearing to appeal the discontinuation decision.
- Provides that a kinship care relative who receives notice that his or her payments are being discontinued may receive payments pending a hearing to appeal the discontinuation decision if the relative requests a hearing within 10 days of the date of the notice or before the payments are discontinued, whichever is later.
- Requires a county department or DHFS to determine that an applicant's conviction record is likely to adversely affect the child or the relative's ability to care for the child in order to deny payments some on the basis of a conviction record. This change also applies to conviction records of employees of the relative and adult residents of the relative's home.
- Requires DHFS to provide applicants who are denied kinship care payments on the basis of a conviction record the right to a fair hearing to appeal the denial.
- Prohibits the department of workforce development (DWD) from requiring relatives to pay a copayment for child care subsidies received on behalf of a child for whom the relative is receiving kinship care payments.
- Permits DHFS to request supplemental funding for the kinship care program if funding for kinship care payments is insufficient.
- Requires DHFS to study methods to manage kinship care funding for kinship care payments in order to minimize the need for waiting lists for payments and to report the results of its study to the governor and the legislature by June 30, 2004.

2. Creates a medical services consent form that parents may use to transfer decision-making authority for routine and emergency medical services to an adult with whom a child lives.

3. Requires notice of a hearing to appoint a guardian to be published as a class 1 notice (i.e., published once) instead of as a class 3 notice (i.e., published 3 times), if personal service is not possible.

4. Requests the joint legislative council to study state laws regarding guardianship and legal custody of minors and the rights and responsibilities of guardians and legal custodians.

1       **SECTION 1.** 48.57 (3m) (am) 1. of the statutes is amended to read:

2       **48.57 (3m) (am) 1.** The kinship care relative applies to the county department or  
3       department for payments under this subsection and the county department or department  
4       determines that there is a need for the child to be placed with the kinship care relative and that  
5       the placement with the kinship care relative is in the best interests of the child. The county  
6       department or department shall determine that there is a need for the child to be placed with  
7       the kinship care relative if any of the following conditions are met:

8       **SECTION 2.** 48.57 (3m) (am) 1. b. of the statutes is created to read:

9       **48.57 (3m) (am) 1. b.** The child has been living with the kinship care relative for 2 years  
10       or longer, and the county department or department determines that the child's parents have  
11       consented to the living arrangement and that the living arrangement is not contrary to the  
12       health, safety, or welfare of the child.

13       **SECTION 3.** 48.57 (3m) (am) 2. of the statutes is renumbered 48.57 (3m) (am) 1. a.

**NOTE:** Under current law, one of the criteria required for receipt of kinship care payments is a finding that the child in the relative's care is a child or juvenile in need of protection or services (CHIPS or JIPS) or would be at risk of being CHIPS or JIPS. SECTION 3 eliminates that requirement for kinship care payment eligibility. Also, under current law, a county department or, in Milwaukee County, the department of health and family services (DHFS), must find that there is a need for the child to be placed with the kinship care relative and that placement with the relative is in the best interests of the child in order for a relative to

receive kinship care payments. SECTIONS 1 and 3 require a county department or DHFS to find that a child meets the eligibility requirement that there is a need for the child to be placed with the kinship care relative if the county department or DHFS determines that the child is CHIPS or JIPS or at risk of being CHIPS or JIPS.

Also, under SECTION 2, if a child has been living with a relative for 2 years or longer and the county department or DHFS determines that the child's parents have consented to the living arrangement and that the living arrangement is not contrary to the child's health, safety, or welfare, the county department or DHFS must find that there is a need for the child to be placed with the relative.

1       **SECTION 4.** 48.57 (3m) (am) 4. and 4m. of the statutes are amended to read:

2       **48.57 (3m) (am) 4.** The county department or department conducts a background  
3 investigation under sub. (3p) of the kinship care relative, any employee and prospective  
4 employee of the kinship care relative who has or would have regular contact with the child  
5 for whom the payments would be made and any other adult resident of the kinship care  
6 relative's home to determine if the kinship care relative, employee, prospective employee or  
7 adult resident has any arrests for which a criminal charge is pending or convictions that could  
8 adversely affect the child or the kinship care relative's ability to care for the child.

9       **4m.** Subject to sub. (3p) (fm) 1. and 2., the kinship care relative states that he or she does  
10 not have any arrests for which a criminal charge is pending or convictions that could adversely  
11 affect the child or the kinship care relative's ability to care for the child and that no adult  
12 resident, as defined in sub. (3p) (a), and no employee or prospective employee of the kinship  
13 care relative who would have regular contact with the child has any arrests for which a criminal  
14 charge is pending or convictions that could adversely affect the child or the kinship care  
15 relative's ability to care for the child.

**NOTE:** Under current law, a county department or, in Milwaukee County, DHFS must conduct a criminal background check to determine whether an applicant for kinship care payments or an employee of the applicant or adult resident of the applicant's home has any arrests or

convictions that could adversely affect the child or the kinship care relative's ability to care for the child. In addition, to be eligible for kinship care payments, an applicant must state that none of those persons that have arrests or convictions that could adversely affect the child or the care of the child.

SECTION 4 limits the arrests which must be considered, as described above, to those for which a criminal charge is pending.

1       **SECTION 5.** 48.57 (3m) (d) of the statutes is renumbered 48.57 (3m) (d) (intro.) and  
2 amended to read:

3       **48.57 (3m) (d) (intro.)** A county department or, in a county having a population of  
4 500,000 or more, the department shall review a placement of a child for which the county  
5 department or department makes payments under par. (am) not less than every 12 months after  
6 the county department or department begins making those payments to determine whether the  
7 conditions specified in par. (am) continue to exist. If those conditions do not continue to exist,  
8 the county department or department shall discontinue making those payments after providing  
9 the kinship care relative whose payments are being discontinued with written notice of that  
10 discontinuation not less than 10 days before the date on which those payments are to be  
11 discontinued. The notice shall advise the kinship care relative of all of the following:

12       **SECTION 6.** 48.57 (3m) (d) 1., 2. and 3. of the statutes are created to read:

13       **48.57 (3m) (d) 1.** That, if the payments are being discontinued on the grounds that a  
14 condition specified in par. (am) 1., 5., 5m., or 6. does not continue to exist, the kinship care  
15 relative may petition the department under par. (g) for a review of that discontinuation by  
16 submitting a petition for review within 45 days after the date on which those payments are  
17 discontinued.

18       **2.** That, if the payments are being discontinued for a reason specified in sub. (3p) (g)  
19 1., 2., or 3., the kinship care relative may petition the department under sub. (3p) (h) for a

1 review of that discontinuation by submitting a petition for review within 45 days after the date  
2 on which those payments are discontinued.

3 3. That, if the kinship care relative submits a petition for review under par. (g) or sub.  
4 (3p) (h) within 10 days after the date of the notice of discontinuation or before the date that  
5 his or her payments are being discontinued, whichever is later, the kinship care relative's  
6 payments may not be discontinued, except as provided in par. (g) 2. a. or b., until a final  
7 decision is rendered on the petition or request for review, but that payments made pending the  
8 decision may be recovered by the department if the discontinuation is upheld.

NOTE: SECTIONS 5 and 6 require a county department or DHFS to notify  
a kinship care relative of the discontinuation of payments at least 10 days  
in advance. The notice must include notice of the kinship care relative's  
rights to appeal the discontinuation and to continued payments while the  
appeal is pending.

9 SECTION 7. 48.57 (3m) (g) 2. of the statutes is amended to read:

10 48.57 (3m) (g) 2. If a recipient requests a hearing within 10 days after the date of notice  
11 that his or her payments under par. (am) are being discontinued or before the date that his or  
12 her payments under par. (am) are being discontinued, whichever is later, those payments may  
13 not be discontinued until a decision is rendered after the hearing but payments made pending  
14 the hearing decision may be recovered by the department if the contested action or failure to  
15 act is upheld. The department shall promptly notify the county department of the county in  
16 which the recipient resides or, if the recipient resides in a county having a population of  
17 500,000 or more, the subunit of the department administering of the kinship care program in  
18 that county that the recipient has requested a hearing. Payments under par. (am) shall be  
19 discontinued if any of the following applies:

NOTE: Under current law, if a county department or DHFS determines  
that a kinship care relative is no longer eligible to receive kinship care  
payments, the county department or DHFS must discontinue those

payments. In general, if the recipient requests a hearing on the discontinuation within 10 days of the date of the notice that payments will be discontinued, the payments may not be discontinued pending the hearing decision. Under SECTION 7, a kinship care relative must request a hearing within 10 days of the notice date or before the date the payments are to be discontinued, whichever is later, in order to receive payments pending the hearing decision.

1       **SECTION 8.** 48.57 (3n) (am) 4. and 4m. of the statutes are amended to read:

2       **48.57 (3n) (am) 4.** The county department or department conducts a background  
3 investigation under sub. (3p) of the long-term kinship care relative, the employees and  
4 prospective employees of the long-term kinship care relative who have or would have regular  
5 contact with the child for whom the payments would be made and any other adult resident,  
6 as defined in sub. (3p) (a), of the long-term kinship care relative's home to determine if the  
7 long-term kinship care relative, employee, prospective employee or adult resident has any  
8 arrests for which a criminal charge is pending or convictions that are likely to adversely affect  
9 the child or the long-term kinship care relative's ability to care for the child.

10       **4m.** Subject to sub. (3p) (fm) 1m. and 2m., the long-term kinship care relative states  
11 that he or she does not have any arrests for which a criminal charge is pending or convictions  
12 that could adversely affect the child or the long-term kinship care relative's ability to care for  
13 the child and that, to the best of the long-term kinship care relative's knowledge, no adult  
14 resident, as defined in sub. (3p) (a), and no employee or prospective employee of the  
15 long-term kinship care relative who would have regular contact with the child has any arrests  
16 for which a criminal charge is pending or convictions that could adversely affect the child or  
17 the long-term kinship care relative's ability to care for the child.

**NOTE:** SECTION 8 limits arrests which may be considered in a criminal background check for long-term kinship care payments to arrests for which a criminal charge is pending.

1           **SECTION 9.** 48.57 (3n) (d) of the statutes is renumbered 48.57 (3n) (d) (intro.) and  
2 amended to read:

3           **48.57 (3n) (d) (intro.)** The county department or, in a county having a population of  
4 500,000 or more, the department shall, at least once every 12 months after the county  
5 department or department begins making payments under this subsection, determine whether  
6 any of the events specified in par. (am) 6. a. to f. have occurred. If any such events have  
7 occurred, the county department or department shall discontinue making those payments after  
8 providing the long-term kinship care relative whose payments are being discontinued with  
9 written notice of that discontinuation not less than 10 days before the date on which those  
10 payments are to be discontinued. The notice shall advise the long-term kinship care relative  
11 of all of the following:

12           **SECTION 10.** 48.57 (3n) (d) 1. and 2. of the statutes are created to read:

13           **48.57 (3n) (d) 1.** That the long-term kinship care relative may petition the department  
14 under par. (g) for a review of that discontinuation by submitting a petition for review within  
15 45 days after the date on which those payments are discontinued.

16           **2.** That, if the long-term kinship care relative submits a petition for review under par.  
17 (g) within 10 days after the date of the notice of discontinuation or before the date that his or  
18 her payments are being discontinued, whichever is later, the long-term kinship care relative's  
19 payments may not be discontinued, except as provided in par. (g) 2. a. or b., until a final  
20 decision is rendered on the petition for review, but that payments made pending the decision  
21 may be recovered by the department if the discontinuation is upheld.

NOTE: SECTIONS 9 and 10 require a county department or DHFS to notify a long-term kinship care relative of the discontinuation of payments at least 10 days in advance. The notice must include notice of the long-term kinship care relative's rights to appeal and to continued payments while the appeal is pending.

1           **SECTION 11.** 48.57 (3n) (g) 2. of the statutes is amended to read:

2           48.57 (3n) (g) 2. If a recipient requests a hearing within 10 days after the date of notice  
3           that his or her payments under par. (am) are being discontinued or before the date that his or  
4           her payments under par. (am) are being discontinued, whichever is later, those payments may  
5           not be discontinued until a decision is rendered after the hearing but payments made pending  
6           the hearing decision may be recovered by the department if the contested action or failure to  
7           act is upheld. The department shall promptly notify the county department of the county in  
8           which the recipient resides or, if the recipient resides in a county having a population of  
9           500,000 or more, the subunit of the department administering of the long-term kinship care  
10          program in that county that the recipient has requested a hearing. Payments under par. (am)  
11          shall be discontinued if any of the following applies:

**NOTE:** Under SECTION 11, a long-term kinship care relative must request  
            a hearing within 10 days of the notice date or before the date the  
            payments are to be discontinued in order to receive payments pending  
            the hearing decision.

12          **SECTION 12.** 48.57 (3p) (d) of the statutes is amended to read:

13          48.57 (3p) (d) If the person being investigated under par. (b) or (c) is a nonresident, or  
14          at any time within the 5 years preceding the date of the application has been a nonresident, or  
15          if the county department or, in a county having a population of 500,000 or more, the  
16          department of health and family services determines that the person's employment, licensing  
17          or state court records provide a reasonable basis for further investigation, the county  
18          department or department of health and family services shall require the person to be  
19          fingerprinted on 2 fingerprint cards, each bearing a complete set of the person's fingerprints.  
20          The department of justice may provide for the submission of the fingerprint cards to the federal  
21          bureau of investigation for the purposes of verifying the identity of the person fingerprinted



1 and obtaining records of his or her criminal ~~arrest and conviction~~ arrests for which a criminal  
2 charge is pending and convictions.

3 **SECTION 13.** 48.57 (3p) (e) 4. of the statutes is amended to read:

4 48.57 (3p) (e) 4. Information regarding the ~~conviction record of the person~~ person's  
5 record of arrests for which a criminal charge is pending and convictions under the law of this  
6 state or any other state or under federal law. This information shall be provided on a notarized  
7 background verification form that the department shall provide by rule.

8 **SECTION 14.** 48.57 (3p) (fm) 1m. of the statutes is amended to read:

9 48.57 (3p) (fm) 1m. The county department or, in a county having a population of  
10 500,000 or more, the department of health and family services may not enter into the  
11 agreement under sub. (3n) (am) 6. unless the county department or department of health and  
12 family services receives information from the department of justice relating to the arrest and  
13 conviction record of the applicant under the law of this state and that record indicates either  
14 that the applicant has ~~not been arrested or convicted~~ no arrests for which a criminal charge is  
15 pending and no convictions or that the applicant has ~~been arrested or convicted~~ an arrest for  
16 which a criminal charge is pending or a conviction but the director of the county department  
17 or, in a county having a population of 500,000 or more, the person designated by the secretary  
18 of health and family services to review arrest and conviction records under this subdivision  
19 determines that the applicant's arrest and conviction record is satisfactory because it does not  
20 include any arrest for which a criminal charge is pending or conviction that the director or  
21 person designated by the secretary determines is likely to adversely affect the child or the  
22 long-term kinship care relative's ability to care for the child. The county department or, in  
23 a county having a population of 500,000 or more, the department of health and family services  
24 may make payments under sub. (3n) conditioned on the receipt of information from the federal

1 bureau of investigation indicating that the person's arrest and conviction record under the law  
2 of any other state or under federal law is satisfactory because the arrest and conviction record  
3 does not include any arrest for which a criminal charge is pending or conviction that the  
4 director of the county department or, in a county having a population of 500,000 or more, the  
5 person designated by the secretary of health and family services to review arrest and  
6 conviction records under this subdivision determines is likely to adversely affect the child or  
7 the long-term kinship care relative's ability to care for the child.

8 **SECTION 15.** 48.57 (3p) (fm) 2. of the statutes is amended to read:

9 48.57 (3p) (fm) 2. A person receiving payments under sub. (3m) may provisionally  
10 employ a person in a position in which that person would have regular contact with the child  
11 for whom those payments are being made or provisionally permit a person to be an adult  
12 resident if the person receiving those payments states to the county department or, in a county  
13 having a population of 500,000 or more, the department of health and family services that the  
14 employee or adult resident does not have any arrests for which a criminal charge is pending  
15 or convictions that could adversely affect the child or the ability of the person receiving  
16 payments to care for the child. A person receiving payments under sub. (3m) may not finally  
17 employ a person in a position in which that person would have regular contact with the child  
18 for whom those payments are being made or finally permit a person to be an adult resident until  
19 the county department or, in a county having a population of 500,000 or more, the department  
20 of health and family services receives information from the department of justice indicating  
21 that the person's conviction record under the law of this state is satisfactory according to the  
22 criteria specified in par. (g) 1. to 3. and the county department or, in a county having a  
23 population of 500,000 or more, the department of health and family services so advises the  
24 person receiving payments under sub. (3m) or until a decision is made under par. (h) 4. to

1 permit a person who is receiving payments under sub. (3m) to employ a person in a position  
2 in which that person would have regular contact with the child for whom payments are being  
3 made or to permit a person to be an adult resident and the county department or, in a county  
4 having a population of 500,000 or more, the department of health and family services so  
5 advises the person receiving payments under sub. (3m). A person receiving payments under  
6 sub. (3m) may finally employ a person in a position in which that person would have regular  
7 contact with the child for whom those payments are being made or finally permit a person to  
8 be an adult resident conditioned on the receipt of information from the county department or,  
9 in a county having a population of 500,000 or more, the department of health and family  
10 services that the federal bureau of investigation indicates that the person's conviction record  
11 under the law of any other state or under federal law is satisfactory according to the criteria  
12 specified in par. (g) 1. to 3.

13 **SECTION 16.** 48.57 (3p) (fm) 2m. of the statutes is amended to read:

14 48.57 (**3p**) (fm) 2m. A person receiving payments under sub. (3n) may provisionally  
15 employ a person in a position in which that person would have regular contact with the child  
16 for whom those payments are being made or provisionally permit a person to be an adult  
17 resident if the person receiving those payments states to the county department or, in a county  
18 having a population of 500,000 or more, the department of health and family services that, to  
19 the best of his or her knowledge, the employee or adult resident does not have any arrests for  
20 which a criminal charge is pending or convictions that could adversely affect the child or the  
21 ability of the person receiving payments to care for the child. A person receiving payment  
22 under sub. (3n) may not finally employ a person in a position in which that person would have  
23 regular contact with the child for whom those payments are being made or finally permit a  
24 person to be an adult resident until the county department or, in a county having a population

1 of 500,000 or more, the department of health and family services receives information from  
2 the department of justice relating to the person's arrest and conviction record under the law  
3 of this state and that record indicates either that the person has ~~not been arrested or convicted~~  
4 no arrests for which a criminal charge is pending or convictions or that the person has been  
5 ~~arrested or convicted~~ an arrest for which a criminal charge is pending or a conviction but the  
6 director of the county department or, in a county having a population of 500,000 or more, the  
7 person designated by the secretary of health and family services to review arrest and  
8 conviction records under this subdivision determines that the arrest and conviction record is  
9 satisfactory because it does not include any arrest for which a criminal charge is pending or  
10 conviction that is likely to adversely affect the child or the long-term kinship care relative's  
11 ability to care for the child and the county department or department of health and family  
12 services so advises the person receiving payments under sub. (3n). A person receiving  
13 payments under sub. (3n) may finally employ a person in a position in which that person would  
14 have regular contact with the child for whom those payments are being made or finally permit  
15 a person to be an adult resident conditioned on the receipt of information from the county  
16 department or, in a county having a population of 500,000 or more, the department of health  
17 and family services that the federal bureau of investigation indicates that the person's arrest  
18 and conviction record under the law of any other state or under federal law is satisfactory  
19 because the conviction record does not include any arrest for which a criminal charge is  
20 pending or conviction that the director of the county department or, in a county having a  
21 population of 500,000 or more, the person designated by the secretary of health and family  
22 services to review arrest and conviction records under this subdivision determines is likely to  
23 adversely affect the child or the long-term kinship care relative's ability to care for the child.

**NOTE:** SECTIONS 12 through 16 limit the arrests that may be considered in criminal background checks for the kinship care program to arrests for which a criminal charge is pending.

1       **SECTION 17.** 48.57 (3p) (g) (intro.) of the statutes is amended to read:

2       48.57 (3p) (g) (intro.) Except as provided in par. (h), the county department or, in a  
3       county having a population of 500,000 or more, the department of health and family services  
4       may not make payments to a person applying for payments under sub. (3m) and a person  
5       receiving payments under sub. (3m) may not employ a person in a position in which that  
6       person would have regular contact with the child for whom those payments are being made  
7       or permit a person to be an adult resident if any of the following applies and the county  
8       department or the department of health and family services determines that the conviction  
9       record is likely to adversely affect the child or the ability of the kinship care relative to care  
10      for the child:

**NOTE:** Section 48.57 (3p) (g) 1. to 3. contains the list of crimes for which kinship care payments must be denied. The listed crimes still apply, but this SECTION requires county departments or DHFS to determine whether a conviction adversely affects the kinship care relative's ability to care for the child, in addition to determining that a relative has been convicted of a specified offense, before denying kinship care benefits.

11      **SECTION 18.** 48.57 (3p) (h) 1. of the statutes is amended to read:

12      48.57 (3p) (h) 1. A person who is denied payments under sub. (3m) for a reason  
13      specified in par. (g) 1., 2. or 3. or a person who is prohibited from employing a person in a  
14      position in which that person would have regular contact with the child for whom payments  
15      under sub. (3m) are being made from permitting a person to be an adult resident for a reason  
16      specified in par. (g) 1., 2. or 3. may ~~request that~~ petition the department for a review of the  
17      denial of payments or the prohibition on employment or being an adult resident ~~be reviewed~~

1 under subd. 2. Review is unavailable if the denial or prohibition occurred more than 45 days  
2 before submission of the petition for review.

3 **SECTION 19.** 48.57 (3p) (h) 2. of the statutes is repealed and recreated to read:

4 48.57 (3p) (h) 2. Upon receipt of a timely petition under subd. 1., the department shall  
5 give the applicant reasonable notice and an opportunity for a fair hearing. The department may  
6 make such additional investigation as it considers necessary. Notice of the hearing shall be  
7 given to the applicant and to the county department or subunit of the department whose action  
8 or failure to act is the subject of the petition. That county department or subunit of the  
9 department may be represented at the hearing.

10 **SECTION 20.** 48.57 (3p) (h) 3. (intro.), a. and c. of the statutes are amended to read:

11 48.57 (3p) (h) 3. (intro.) ~~The director of the county department, the person designated~~  
12 ~~by the governing body of a federally recognized American Indian tribe or band or, in a county~~  
13 ~~having a population of 500,000 or more, the person designated by the secretary of health and~~  
14 ~~family services~~ shall review the denial of payments or the prohibition on employment or being  
15 an adult resident to determine if the arrest and conviction record on which the denial or  
16 prohibition is based includes any arrests for which a criminal charge is pending, convictions  
17 or penalties that are likely to adversely affect the child or the ability of the kinship care relative  
18 to care for the child. In reviewing the denial or prohibition, the ~~director of the county~~  
19 ~~department, the person designated by the governing body of the federally recognized~~  
20 ~~American Indian tribe or band or the person designated by the secretary of health and family~~  
21 ~~services~~ shall consider, but not be limited to, all of the following factors:

22 a. The length of time between the date of the arrest for which a criminal charge is  
23 pending, conviction or ~~of the~~ imposition of the penalty and the date of the review.

1 c. Whether ~~making an exception to~~ the denial or prohibition ~~would be~~ is in the best  
2 interests of the child.

3 **SECTION 21.** 48.57 (3p) (h) 4. of the statutes is repealed and recreated to read:

4 48.57 (3p) (h) 4. The department shall render its decision as soon as possible after the  
5 hearing and shall send a certified copy of its decision to the applicant and to the county  
6 department or subunit of the department whose action or failure to act is the subject of the  
7 petition. The decision of the department shall have the same effect as an order of the county  
8 department or subunit of the department whose action or failure to act is the subject of the  
9 petition. The decision shall be final, but may be revoked or modified as altered conditions may  
10 require. The department shall deny a petition for review or shall refuse to grant relief if any  
11 of the following applies:

12 a. The petitioner withdraws the petition in writing.

13 b. The petitioner abandons the petition. Abandonment occurs if the petitioner fails to  
14 appear in person or by a representative at a scheduled hearing without good cause, as  
15 determined by the department.

16 **SECTION 22.** 48.57 (3p) (h) 5. of the statutes is repealed.

**NOTE:** Under SECTIONS 18 through 22 if a person is denied kinship care payments on the basis of his or her conviction record or prohibited from employing a person or permitting an adult from living in the relative's home based on that person's conviction record, the person may petition the DHFS within 45 days of the denial or prohibition for review. The review must determine whether the conviction record will likely adversely affect the child or the kinship care relative's ability to care for the child. Upon receipt of a timely petition, DHFS must give the relative an opportunity for a fair hearing.

SECTION 20 also limits arrests that may be considered in criminal background checks to arrests for which a criminal charge is pending.

17 **SECTION 23.** 48.57 (3p) (h) of the statutes is amended to read:

1        48.57 (3p) (hm) A county department or, in a county having a population of 500,000  
2 or more, the department may not make payments to a person under sub. (3n) and a person  
3 receiving payments under sub. (3n) may not employ a person in a position in which that person  
4 would have regular contact with the child for whom payments are being made or permit a  
5 person to be an adult resident if the director of the county department or, in a county having  
6 a population of 500,000 or more, the person designated by the secretary to review arrest and  
7 conviction records under this paragraph determines that the person has any arrest for which  
8 a criminal charge is pending or conviction that is likely to adversely affect the child or the  
9 long-term kinship care relative's ability to care for the child.

NOTE: SECTION 23 limits the arrests that may be considered for criminal background checks for the long-term kinship care program to arrests for which a criminal charge is pending.

10        SECTION 24. 48.57 (3r) of the statutes is created to read:

11        48.57 (3r) If the amounts in the appropriation under s. 20.435 (3) (kc) are insufficient  
12 to provide payments under sub. (3m) (am) (intro.), or (3n) (am) (intro.) to all persons who are  
13 eligible to receive those payments, the department may request the secretary of administration  
14 under s. 16.515 to supplement that appropriation for the purpose of increasing funding for  
15 those payments. Notwithstanding s. 16.515 (1), the secretary of administration may  
16 supplement the appropriation under s. 20.435 (3) (kc) if all of the following occur:

17        (a) The secretary of administration determines that the amounts in the appropriation are  
18 insufficient to provide payments under sub. (3m) (am) (intro.) or (3n) (am) (intro.) to all  
19 persons who are eligible to receive those payments.

20        (b) The joint committee on finance either does not schedule a meeting for the purpose  
21 of reviewing the proposed supplementation within 14 working days after the secretary of  
22 administration notifies the committee of the proposed supplementation or, if the committee



1 schedules a meeting for the purpose of reviewing the proposed supplementation, the  
2 committee approves the proposed supplementation.

NOTE: SECTION 24 permits DHFS to request the secretary of administration to provide supplemental funding for the kinship care program if the amount of funding is insufficient to provide kinship care and long-term kinship care payments to all persons who are eligible to receive those payments. The joint committee on finance must approve any supplemental funding proposed by the secretary of administration.

3 SECTION 25. 48.979 of the statutes is created to read:

4 **48.979 Authorization to consent to medical services. (1) DEFINITIONS.** In this section:

5 (a) "Caregiver" means an individual who has attained 18 years of age with whom the  
6 child resides.

7 (b) "Health care provider" means any person licensed, registered, permitted, or certified  
8 by the department or by the department of regulation and licensing to provide medical services  
9 in this state.

10 (c) "Medical services" means any ordinary or emergency medical or dental care,  
11 treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition.

12 (2) DESIGNATING A CAREGIVER TO CONSENT TO MEDICAL SERVICES. (a) A parent may  
13 designate a caregiver to consent to medical services for his or her child by completing a  
14 medical services consent form.

15 (b) A valid medical services consent form shall be all of the following:

- 16 1. In writing.
- 17 2. Dated and signed by the parent and the caregiver whom the parent is designating to  
18 consent to medical services for the child.
- 19 3. Voluntarily executed.

1 (c) A medical services consent form under this section shall remain in effect for the  
2 period of time specified on the form or, if no time period is specified, for one year from the  
3 date it is executed, unless it is revoked or otherwise made invalid earlier.

4 (d) Nothing in this section shall be construed to make invalid other instruments that are  
5 voluntarily executed by a parent authorizing an individual or other entity to consent to medical  
6 services.

7 (3) EFFECT OF MEDICAL SERVICES CONSENT FORM; FORM. (a) Unless the medical services  
8 consent form otherwise provides, the caregiver who is known to the health care provider to  
9 be available to consent to medical services for the child has priority over other individuals  
10 other than a parent to make medical services decisions pursuant to the medical services  
11 consent form. However, the medical services consent form does not take priority over a court  
12 order or letter of guardianship specifying authority to make medical services decisions.

13 (b) The department shall prepare the medical services consent form and accompanying  
14 information. The department shall include, in information accompanying the form, at least  
15 the statutory definitions of terms used in the form. The department shall prepare the form and  
16 accompanying information in English, Spanish, and other languages spoken by a significant  
17 number of state residents, as determined by the department. The department shall make the  
18 medical services consent form available at no charge on the Internet. The medical services  
19 consent form prepared by the department shall be in the following form:

20 MEDICAL SERVICES CONSENT

21 **Use of form:** Use of this form is voluntary, but completion will aid caregivers in  
22 ensuring that appropriate and timely health care is provided. The form is to be completed by  
23 the parent of a child who is being cared for by another adult.

1       **Instructions:** If additional space is needed, attach a separate sheet or use reverse side  
2 of this form.

3       Name - Parent (Last, First, MI)

4       Name - Child (Last, First, MI)       Birthdate - Child (mm/dd/yyyy)

5       Name - Caregiver (Last, First, MI)

6       I hereby give consent to my child's caregiver to do the following:

7       **A. Routine Medical Services Consent and Exclusions**

8       For purposes of routine medical services for the above-named child, provide routine  
9 medical services, including medical and dental examinations and nonemergency prescribed  
10 treatments (e.g., tooth repair, immunizations, medications), with the following exceptions:  
11 (If there are no exceptions, write "none".)

12 .....  
13 .....  
14 .....  
15 .....

16       **B. Emergency Medical Services Consent and Exclusions**

17       In case of a medical emergency involving the above named child, arrange for emergency  
18 medical services using the following procedures:

19       1. A reasonable effort will be made to contact me and secure my consent for needed  
20 medical services, including surgical procedures.

21       2. If I cannot be located within a reasonable time, the child's caregiver has the authority  
22 to consent to emergency medical services, including surgery performed.

23       3. All medical services will be under the direction of a licensed dental care provider or  
24 physician or other licensed professional as appropriate.

1 I have no objections to the caregiver exercising his or her authority, with the following  
2 exceptions: (If there are no exceptions, write "none".)

3 .....  
4 .....  
5 .....  
6 .....

7 **C. Parent Information**

8 Address - Home (Street, City, State, Zip Code) Telephone Number - Home

9 Address - Work (Street, City, State, Zip Code) Telephone Number - Work

10 Address - Other (Specify) Telephone Number - Other

11 Address - Other (Specify) Telephone Number - Other

12 **SIGNATURE** - Parent Date Signed

13 **D. Caregiver Information and Statement**

14 Address - Home (Street, City, State, Zip Code) Telephone Number - Home

15 Address - Work (Street, City, State, Zip Code) Telephone Number - Work

16 I intend to make medical services decisions for the above-named child consistent with  
17 what I and the child's health care providers believe is in the child's best interest and consistent  
18 with any wishes or beliefs I am aware the child's parent has.

19 **SIGNATURE** - Caregiver Date Signed

20 This medical services consent form shall remain in effect until \_\_\_\_ (date). (If no date  
21 is specified, the form will remain in effect for one year from the date it is signed by the parent,  
22 unless it is revoked or becomes invalid earlier.)

23 (4) REVOCATION OF MEDICAL SERVICES FORM. (a) A parent may revoke and invalidate  
24 a medical services consent form at any time by doing any of the following:

1           1. Canceling, defacing, obliterating, burning, tearing, or otherwise destroying the  
2 medical services consent form.

3           2. Executing a statement, in writing, that is signed and dated by the parent, expressing  
4 the parent's intent to revoke the medical services consent form.

5           3. Executing a subsequent medical services consent form.

6           (b) A medical services consent form is not valid if the minor no longer resides with the  
7 relative caregiver.

8           (c) If a caregiver knows that the instrument that named him or her to make medical  
9 services decisions for a child has been revoked or is no longer valid, he or she shall  
10 communicate this fact to any health care provider for the child that he or she knows has a copy  
11 of the medical services consent form.

12           (d) The child's health care provider shall, upon notification of revocation or invalidity  
13 of the medical services consent form, record in the child's medical record the time, date, and  
14 place of the notification to the health care provider of the revocation.

15           **(5) DUTIES AND IMMUNITIES.** (a) No health care facility or health care provider may be  
16 charged with a crime, held civilly liable, or charged with unprofessional conduct for any of  
17 the following in providing medical services pursuant to a medical services consent form:

18           1. Complying, in the absence of actual knowledge of a revocation, with the terms of a  
19 medical services consent form that is in compliance with this section or the decision of a  
20 caregiver that is made under a medical services consent form that is in compliance with this  
21 section.

22           2. Acting contrary to or failing to act on a revocation of a medical services consent form,  
23 unless the health care facility or health care provider has actual knowledge of the revocation.

1           3. Acting contrary to or failing to act on the medical services decision of a parent, unless  
2 the health care facility or health care provider has actual knowledge of the parent's medical  
3 services decision.

4           (b) In the absence of actual notice to the contrary, a health care facility or health care  
5 provider may presume that a parent was authorized to execute the medical services consent  
6 form under the requirements of this section and that the form is valid.

7           (c) No caregiver may be charged with a crime or held civilly liable for making a decision  
8 in good faith under a medical services consent form that is in compliance with this section.

9           **(6) PENALTIES.** (a) Whoever knowingly falsifies or forges a medical services consent  
10 form with intent to create the false impression that a person other than the caregiver has been  
11 designated to consent to medical services for a child is subject to a forfeiture not to exceed  
12 \$200.

13           (b) Whoever gives or attempts to give consent for medical services based on a medical  
14 services consent form that the individual knows has been executed without the voluntary  
15 consent of the parent or that the individual knows has been forged or substantially altered  
16 without the authorization of the child's parent with the intent to act contrary to the parent's  
17 wishes may be fined not more than \$500 or imprisoned for not more than 30 days, or both.

**NOTE:** SECTION 25 creates a new section in the Children's Code that allows a parent to complete a form that gives an adult with whom a child lives the authority to make medical services decisions for the child on behalf of the parent.

This SECTION includes a medical services consent form. The form must be signed by the parent and by the caregiver. DHFS must prepare the medical services consent form and accompanying information and make the form available, at no charge, on the Internet. The form must be prepared in English, Spanish, and any other language DHFS determines is spoken by a significant number of state residents.

A valid medical services consent form gives the caregiver the authority to make routine and emergency health care decisions for the named child. A contravening decision by a parent, however, supersedes the caregiver's decision.

This SECTION allows a parent to revoke a medical services consent form. Also, a form is not valid if the child no longer lives with the caregiver.

This SECTION provides immunity from liability for health care providers who act in good faith in complying with a medical services consent form. In addition, a caregiver may not be liable for making a decision in good faith under a valid medical services consent form.

The SECTION provides penalties for falsifying a medical services consent form and for attempting to give consent under a forged form with the intent of acting contrary to the child's parent's wishes.

1       **SECTION 26.** 49.155 (5) of the statutes is amended to read:

2       49.155 (5) **LIABILITY FOR PAYMENT.** (a) An individual is liable for the percentage of the  
3       cost of the child care specified by the department in a printed copayment schedule except as  
4       provided in pars. (b), (c) and (d).

5       (b) An individual who is under the age of 20 and is attending high school or participating  
6       in a course of study meeting the standards established under s. 115.29 (4) for the granting of  
7       a declaration of equivalency to high school graduation may not be determined liable for more  
8       than the minimum copayment amount for the type of child care received and the number of  
9       children receiving child care.

10       **SECTION 27.** 49.155 (5) (c) and (d) of the statutes are created to read:

11       49.155 (5) (c) An individual who is a relative of the child is not liable for a copayment  
12       for a child on behalf of whom the individual is receiving payments under s. 48.57 (3m) or (3n).

13       (d) An individual who the department specifies, by rule, is not liable for a copayment.

**NOTE:** SECTIONS 26 and 27 create exceptions to the requirement that an individual who receives a child care subsidy is liable for a percentage of the cost of the child care. Under SECTION 27, a kinship care relative is not liable for a percentage of the cost. In addition, a person who the

department of workforce development specifics is not liable for a copayment is not liable under SECTION 27.

1       **SECTION 28.** 880.08 (3) (am) (intro.) of the statutes is amended to read:

2       880.08 (3) (am) (intro.) When the proposed ward is a minor, notice shall be given as  
3       provided in s. 879.05 to all of the following persons, if applicable, except that notice required  
4       to be given by publication shall be published as a class 1 notice:

NOTE: SECTION 28 modifies current law so that notice of a hearing to appoint a guardian for a minor must be published in a newspaper as a class 1 notice (i.e., published once) if personal service is not possible. Under current law, such notice must be published as a class 3 notice (i.e., published 3 times).

5       **SECTION 29. Nonstatutory provisions.**

6       (1) GUARDIANSHIP AND LEGAL CUSTODY OF MINORS. The joint legislative council is  
7       requested to study state laws regarding guardianship and legal custody of minors and the rights  
8       and responsibilities of guardians and legal custodians. If the joint legislative council conducts  
9       the study, the joint legislative council shall report its findings, conclusions, and  
10      recommendations to the legislature in the manner provided under section 13.172 (2) of the  
11      statutes by January 1, 2005.

12      (2) The department of health and family services shall study methods to manage  
13      funding for kinship care payments in order to minimize the need for waiting lists for kinship  
14      care payments. The department shall submit a report summarizing the results of the study to  
15      the chief clerk of each house of the legislature for distribution to the appropriate standing  
16      committees in the manner provided under section 13.172 (3) of the statutes, by June 30, 2004.

NOTE: SECTION 29 requests the Joint Legislative Council to study state laws regarding guardianship and legal custody of minors and the rights and responsibilities of guardians and legal custodians.

SECTION 29 also requires DHFS to study methods to manage funding for kinship care payments in order to minimize the need for waiting lists for



payments and to report on the results of its study to the appropriate standing committees of the legislature by June 30, 2004.

1

(END)



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-2081/P1

GMM:....pg

kjt

P2

SOON!

DRAFT

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Regenerate

1 AN ACT *to repeal* 48.57 (3p) (h) 5.; *to renumber* 48.57 (3m) (am) 2.; *to renumber*  
2 *and amend* 48.57 (3m) (d) and 48.57 (3n) (d); *to amend* 48.57 (3m) (am) 1.,  
3 48.57 (3m) (am) 4. and 4m., 48.57 (3m) (g) 2., 48.57 (3n) (am) 4. and 4m., 48.57  
4 (3n) (g) 2., 48.57 (3p) (d), 48.57 (3p) (e) 4., 48.57 (3p) (fm) 1m., 48.57 (3p) (fm)  
5 2., 48.57 (3p) (fm) 2m., 48.57 (3p) (g) (intro.), 48.57 (3p) (h) 1., 48.57 (3p) (h) 3.  
6 (intro.), a. and c., 48.57 (3p) (hm), 49.155 (5) and 880.08 (3) (am) (intro.); *to*  
7 *repeal and recreate* 48.57 (3p) (h) 2. and 48.57 (3p) (h) 4.; and *to create* 48.57  
8 (3m) (am) 1. b., 48.57 (3m) (d) 1., 2. and 3., 48.57 (3n) (d) 1. and 2., 48.57 (3r),  
9 48.979 and 49.155 (5) (c) and (d) of the statutes; *relating to:* ~~the~~ kinship care  
10 ~~program~~, notice of guardianship proceedings, creating a ~~new~~ services

hear 142

*Granting rule-making authority*  
 This bill is explained in the NOTES provided  
 by the Joint Legislative Council in the bill.

**CRIME**

- 1 consent form, ~~and~~ requesting the joint legislative council to study guardianship
- 2 and legal custody *and providing for penalties*

### Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill ~~was~~ was prepared for the Joint Legislative Council's Special Committee on Relative Caregivers. The special committee was directed to study: (1) current law relating to relative caregivers under the Children's Code and under current law relating to guardianship and kinship care; (2) relatives who care for children under an informal agreement between the child's parent and the relative and whether such relatives should be granted decision-making authority with respect to the child's care; and (3) third-party visitation law and enforcement of third-party visitation orders.

The bill ~~now~~ does the following:

*of human services or social services  
(county department)*

1. Makes the following changes to current law relating to ~~the~~ kinship care

- Modifies the eligibility criteria so that a child does not need to be a child or juvenile in need of protection or services (CHIPS or JIPS) in order for a kinship care relative to receive payments. In addition, a county department ~~or~~, in Milwaukee County, the department of health and family services (DHFS) must find, for purposes of determining eligibility for kinship care payments, that a child needs to be placed with the relative if the child is CHIPS or JIPS or if the child has lived with the relative for 2 years or longer and the placement is voluntary and appropriate.

*determining eligibility for*

- Limits the arrests that a county department or DHFS may consider in conducting a criminal background check for purposes of kinship care ~~payment eligibility~~ to arrests for which a criminal charge is pending.

*payments*

- Requires a county department or DHFS to provide notice of discontinuation of kinship care payments to a relative at least 10 days before the payments are to be discontinued along with notice of the relative's rights to appeal the discontinuation and to receive payments pending a hearing to appeal the discontinuation decision.

- Provides that a kinship care relative who receives notice that his or her payments are being discontinued may ~~receive~~ payments pending a hearing to appeal the discontinuation decision if the relative requests a hearing ~~within 10 days of the date of the notice or~~ before the payments are discontinued, ~~whichever is later~~.

*a kinship care relative's*

- Requires a county department or DHFS to determine that an applicant's conviction record is likely to adversely affect the child or the relative's ability to care for the child in order to deny payments ~~some~~ on the basis of a conviction record. This change also applies to conviction records of employees of the relative and adult residents of the relative's home.

*who would have regular contact with the child*

- Requires DHFS to provide applicants who are denied kinship care payments on the basis of a conviction record the right to a fair hearing to appeal the denial.

*(Notice)  
continue receiving*

*on the of*

*on the of*

*or*

a kinship care relative

• Prohibits the department of workforce development ~~(DWD)~~ from requiring ~~relatives~~ to pay a copayment for child care subsidies received on behalf of a child for whom the relative is receiving kinship care payments.

• Permits DHFS to request supplemental funding for ~~the~~ kinship care program if funding for kinship care payments is insufficient.

• Requires DHFS to study methods to manage ~~kinship care~~ <sup>phase</sup> funding for kinship care payments in order to minimize the need for waiting lists for payments and to report the results of its study to ~~the governor and~~ the legislature by June 30, 2004.

2. Creates a ~~medical~~ <sup>health</sup> services consent form that parents may use to transfer decision-making authority for routine and emergency ~~medical~~ <sup>use twice</sup> services to an adult with whom a child lives.

3. Requires notice of a hearing to appoint a guardian to be published as a class 1 notice (i.e., published once) instead of as a class 3 notice (i.e., published 3 times), if personal service is not possible.

4. Requests the joint legislative council to study state laws regarding guardianship and legal custody of minors and the rights and responsibilities of guardians and legal custodians.

~~renumbered 48.57 (3m) (am) 1. (intro.) and~~

SECTION 1. 48.57 (3m) (am) 1. of the statutes is ~~amended~~ to read:

~~(intro.)~~

48.57 (3m) (am) 1. ~~The~~ kinship care relative applies to the county department

or department for payments under this subsection and the county department or

department determines that there is a need for the child to be placed with the kinship

care relative and that the placement with the kinship care relative is in the best

interests of the child. The county department or department shall determine that

there is a need for the child to be placed with the kinship care relative if any of the

following conditions <sup>is</sup> are met:

SECTION 2. 48.57 (3m) (am) 1. b. of the statutes is created to read:

48.57 (3m) (am) 1. b. The child has been living with the kinship care relative

for 2 years or longer, and the county department or department determines that the

child's parents have consented to the living arrangement and that the living

arrangement is not contrary to the health, safety, or welfare of the child.

SECTION 3. 48.57 (3m) (am) 2. of the statutes is renumbered 48.57 (3m) (am)

1. a.

NOTE: Under current law, one of the criteria required for receipt of kinship care payments is a finding that the child in the relative's care is a child or juvenile in need of

change  
to RA

payments

protection or services (CHIPS or JIPS) or would be at risk of being CHIPS or JIPS. SECTION 4 eliminates that requirement for kinship care payment eligibility. Also, under current law, a county department or, in Milwaukee County, the department of health and family services (DHFS), must find that there is a need for the child to be placed with the kinship care relative and that placement with the relative is in the best interests of the child in order for a relative to receive kinship care payments. SECTIONS 4 and 3 require a county department or DHFS to find that a child meets the eligibility requirement that there is a need for the child to be placed with the kinship care relative if the county department or DHFS determines that the child is CHIPS or JIPS or at risk of being CHIPS or JIPS.

Also, under SECTION 4, if a child has been living with a relative for 2 years or longer and the county department or DHFS determines that the child's parents have consented to the living arrangement and that the living arrangement is not contrary to the child's health, safety, or welfare, the county department or DHFS must find that there is a need for the child to be placed with the relative.

SECTION 4. 48.57 (3m) (am) 4. and 4m. of the statutes are amended to read:

48.57 (3m) (am) 4. The county department or department conducts a background investigation under sub. (3p) of the kinship care relative, any employee and prospective employee of the kinship care relative who has or would have regular contact with the child for whom the payments would be made and any other adult resident of the kinship care relative's home to determine if the kinship care relative, employee, prospective employee or adult resident has any arrests for which a criminal charge is pending or convictions that could adversely affect the child or the kinship care relative's ability to care for the child.

4m. Subject to sub. (3p) (fm) 1. and 2., the kinship care relative states that he or she does not have any arrests for which a criminal charge is pending or convictions that could adversely affect the child or the kinship care relative's ability to care for the child and that no adult resident, as defined in sub. (3p) (a), and no employee or prospective employee of the kinship care relative who would have regular contact with the child has any arrests for which a criminal charge is pending or convictions that could adversely affect the child or the kinship care relative's ability to care for the child.

who <sup>w</sup>ould have regular contact with the child, or an

any

applicant's

NOTE: Under current law, a county department or, in Milwaukee County, DHFS must conduct a criminal background check to determine whether an applicant for kinship care payments ~~or~~ an employee of the applicant ~~or~~ adult resident of the applicant's home has any arrests or convictions that could adversely affect the child or the kinship care relative's ability to care for the child. In addition, to be eligible for kinship care payments, an applicant must state that none of those persons ~~that~~ have arrests or convictions that could adversely affect the child or the care of the child.

De (4)

that

applicant's ability to care for arrests

SECTION 4 limits the arrests which must be considered, as described above, to those for which a criminal charge is pending.

In determining eligibility for kinship care payments

SECTION 5. 48.57 (3m) (d) of the statutes is renumbered 48.57 (3m) (d) (intro.)

and amended to read:

48.57 (3m) (d) (intro.) A county department or, in a county having a population of 500,000 or more, the department shall review a placement of a child for which the county department or department makes payments under par. (am) not less than every 12 months after the county department or department begins making those payments to determine whether the conditions specified in par. (am) continue to exist. If those conditions do not continue to exist, the county department or department shall discontinue making those payments after providing the kinship care relative whose payments are being discontinued with written notice of that discontinuation not less than 10 days before the date on which those payments are to be discontinued. The notice shall advise the kinship care relative of all of the following:

SECTION 6. 48.57 (3m) (d) 1., 2. and 3. of the statutes are created to read:

48.57 (3m) (d) 1. That, if the payments are being discontinued on the grounds that a condition specified in par. (am) 1., 5., 5m., or 6. does not continue to exist, the kinship care relative may petition the department under par. (g) for a review of that discontinuation by submitting a petition for review within 45 days after the date on which those payments are discontinued.

based on arrest or conviction record

2. That, if the payments are being discontinued for a reason specified in sub. (3p) (g) 1, 2, or 3, the kinship care relative may petition the department under sub. (3p) (h) for a review of that discontinuation by submitting a petition for review within 45 days after the date on which those payments are discontinued.

3. That, if the kinship care relative submits a petition for review under par. (g) or sub. (3p) (h) within 10 days after the date of the notice of discontinuation or before the date <sup>on which</sup> his or her payments are <sup>to be</sup> discontinued, whichever is later, the kinship care relative's payments may not be discontinued, except as provided in par.

(g) 2. a. or b., until a final decision is rendered on the petition or request for review, but that payments made pending the decision may be recovered by the department if the discontinuation is upheld.

NOTE: SECTIONS (3) (6) and require a county department or DHFS to notify a kinship care relative of the discontinuation of payments at least 10 days in advance. The notice must include notice of the kinship care relative's rights to appeal the discontinuation and to continue payments while the appeal is pending.

SECTION 48.57 (3m) (g) 2. of the statutes is amended to read:

48.57 (3m) (g) 2. If a recipient requests a hearing within 10 days after the date of notice that his or her payments under par. (am) are being discontinued or before the date <sup>on which</sup> his or her payments under par. (am) are <sup>to be</sup> discontinued, whichever is later, those payments may not be discontinued until a decision is rendered after the hearing but payments made pending the hearing decision may be recovered by the <sup>county department or</sup> department if the <sup>discontinuation</sup> contested action or failure to act is upheld. The department shall promptly notify the county department of the county in which the recipient resides or, if the recipient resides in a county having a population of 500,000 or more, the subunit of the department administering of the kinship care program in that county that the recipient has requested a hearing. Payments under par. (am) shall be discontinued if any of the following applies:

pending a hearing decision

of the county department or DHFS

County department or

, subject to DHS's right to recover those payments if the discontinuation is upheld

except as provided in s.b.d. 2. a. or b.

continue receiving

Insert 6-12 13

NOTE: Under current law, if a county department or DHFS determines that a kinship care relative is no longer eligible to receive kinship care payments, the county department or DHFS must discontinue those payments. In general, if the recipient requests a hearing on the discontinuation within 10 days of the date of the notice that payments will be discontinued, the payments may not be discontinued pending the hearing decision. Under SECTION 7, a kinship care relative must request a hearing within 10 days of the notice date or before the date the payments are to be discontinued, whichever is later in order to receive payments pending the hearing decision.

SECTION 7. 48.57 (3n) (am) 4. and 4m. of the statutes are amended to read:

48.57 (3n) (am) 4. The county department or department conducts a background investigation under sub. (3p) of the long-term kinship care relative, the employees and prospective employees of the long-term kinship care relative who have or would have regular contact with the child for whom the payments would be made and any other adult resident, as defined in sub. (3p) (a), of the long-term kinship care relative's home to determine if the long-term kinship care relative, employee, prospective employee or adult resident has any arrests for which a criminal charge is pending or convictions that are likely to adversely affect the child or the long-term kinship care relative's ability to care for the child.

4m. Subject to sub. (3p) (fm) 1m. and 2m., the long-term kinship care relative states that he or she does not have any arrests for which a criminal charge is pending or convictions that could adversely affect the child or the long-term kinship care relative's ability to care for the child and that, to the best of the long-term kinship care relative's knowledge, no adult resident, as defined in sub. (3p) (a), and no employee or prospective employee of the long-term kinship care relative who would have regular contact with the child has any arrests for which a criminal charge is pending or convictions that could adversely affect the child or the long-term kinship care relative's ability to care for the child.

NOTE: SECTION 7 limits arrests which may be considered in a criminal background check for long-term kinship care payments to arrests for which a criminal charge is pending.

to determine eligibility



1 SECTION ~~9~~<sup>4</sup> 48.57 (3n) (d) of the statutes is renumbered 48.57 (3n) (d) (intro.)  
2 and amended to read:

3 48.57 (3n) (d) (intro.) The county department or, in a county having a  
4 population of 500,000 or more, the department shall, at least once every 12 months  
5 after the county department or department begins making payments under this  
6 subsection, determine whether any of the events specified in par. (am) 6. a. to f. ~~have~~

7 occurred. If any such ~~events have~~ occurred, the county department or department  
8 shall discontinue making those payments after providing the long-term kinship care  
9 relative whose payments are being discontinued with written notice of that  
10 discontinuation not less than 10 days before the date on which those payments are  
11 to be discontinued. The notice shall advise the long-term kinship care relative of all  
12 of the following:

13 SECTION ~~10~~<sup>4</sup> 48.57 (3n) (d) 1. and 2. of the statutes are created to read:

14 48.57 (3n) (d) 1. That the long-term kinship care relative may petition the  
15 department under par. (g) for a review of that discontinuation by submitting a  
16 petition for review within 45 days after the date on which those payments are  
17 discontinued.

18 2. That, if the long-term kinship care relative submits a petition for review  
19 under par. (g) within 10 days after the date of the notice of discontinuation or before  
20 the date <sup>on which</sup> his or her payments are being <sup>to be</sup> discontinued, whichever is later, the  
21 long-term kinship care relative's payments may not be discontinued, except as  
22 provided in par. (g) 2. a. or b., until a final decision is rendered on the petition for  
23 review, but that payments made pending the decision may be recovered by the

24 department if the discontinuation is upheld.

County department or

(3n)

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 10  
 11  
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 14  
 15  
 16  
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 18  
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 21  
 subject to the right of the county department or DHFS to recover those payments if the discontinuation is upheld

NOTE: SECTIONS and require a county department or DHFS to notify a long-term kinship care relative of the discontinuation of payments at least 10 days in advance. The notice must include notice of the long-term kinship care relative's rights to appeal and to continued payments while the appeal is pending.

continue receiving

except as provided in subd. 2.

SECTION 48.57 (3n) (g) 2. of the statutes is amended to read:

a. or b.

48.57 (3n) (g) 2. If a recipient requests a hearing within 10 days after the date of notice that his or her payments under par. (am) are being discontinued or before the date that his or her payments under par. (am) are being discontinued, whichever is later, those payments may not be discontinued until a decision is rendered after the hearing but payments made pending the hearing decision may be recovered by the county department or the department if the contested action or failure to act is upheld. The department shall promptly notify the county department of the county in which the recipient resides or, if the recipient resides in a county having a population of 500,000 or more, the subunit of the department administering of the long-term kinship care program in that county that the recipient has requested a hearing. Payments under par. (am) shall be discontinued if any of the following applies:

whose payments are discontinued

NOTE: Under SECTION, a long-term kinship care relative must request a hearing within 10 days of the notice date or before the date the payments are to be discontinued in order to receive payments pending the hearing decision.

SECTION 48.57 (3p) (d) of the statutes is amended to read:

48.57 (3p) (d) If the person being investigated under par. (b) or (c) is a nonresident, or at any time within the 5 years preceding the date of the application has been a nonresident, or if the county department or, in a county having a population of 500,000 or more, the department of health and family services determines that the person's employment, licensing or state court records provide a reasonable basis for further investigation, the county department or department of health and family services shall require the person to be fingerprinted on 2 fingerprint cards, each bearing a complete set of the person's fingerprints. The

1 department of justice may provide for the submission of the fingerprint cards to the  
2 federal bureau of investigation for the purposes of verifying the identity of the person  
3 fingerprinted and obtaining records of his or her ~~criminal arrest and conviction~~  
4 arrests for which a criminal charge is pending and convictions.

5 ~~SECTION 13.~~ 48.57 (3p) (e) 4. of the statutes is amended to read:

6 48.57 (3p) (e) 4. Information regarding the ~~conviction record of the person~~  
7 person's record of arrests for which a criminal charge is pending and convictions

8 under the law of this state or any other state or under federal law. This information  
9 shall be provided on a notarized background verification form that the department

10 shall provide by rule. indicating that the does not include any arrest for which  
11 a criminal charge is pending or

12 ~~SECTION 14.~~ 48.57 (3p) (fm) 1m. of the statutes is amended to read: conviction that

13 48.57 (3p) (fm) 1m. The county department or, in a county having a population  
14 of 500,000 or more, the department of health and family services may not enter into  
15 the agreement under sub. (3n) (am) 6, unless the county department or department  
16 relating to the arrest and conviction record of the applicant under the law of this state

17 and that record indicates either that the applicant has not been arrested or convicted

18 no arrests for which a criminal charge is pending and no convictions or that the

19 applicant has been arrested or convicted an arrest for which a criminal charge is

20 pending or a conviction but the director of the county department or, in a county

21 having a population of 500,000 or more, the person designated by the secretary of  
22 health and family services to review arrest and conviction records under this

23 subdivision determines that the applicant's arrest and conviction record is

24 satisfactory because it does not include any arrest for which a criminal charge is

25 pending or conviction that the director or person designated by the secretary

applicant's

1) ~~determines~~ is likely to adversely affect the child or the ~~long-term kinship care~~  
2) ~~relative's~~ ability to care for the child. The county department or, in a county having  
3 a population of 500,000 or more, the department of health and family services may  
4 make payments under sub. (3n) conditioned on the receipt of information from the  
5 federal bureau of investigation indicating that the person's arrest and conviction  
6 record under the law of any other state or under federal law ~~is satisfactory because~~  
7 ~~the arrest and conviction record~~ does not include any arrest for which a criminal  
8 charge is pending or conviction that the director of the county department or, in a  
9 county having a population of 500,000 or more, the person designated by the  
10 secretary of health and family services to review arrest and conviction records under  
11 this subdivision determines is likely to adversely affect the child or the ~~long-term~~  
12 ~~kinship care relative's~~ person's ability to care for the child.

13 SECTION ~~15~~ 48.57 (3p) (fm) 2. of the statutes is amended to read:

14 48.57 (3p) (fm) 2. A person receiving payments under sub. (3m) may  
15 provisionally employ a person in a position in which that person would have regular  
16 contact with the child for whom those payments are being made or provisionally  
17 permit a person to be an adult resident if the person receiving those payments states  
18 to the county department or, in a county having a population of 500,000 or more, the  
19 department of health and family services that the employee or adult resident does  
20 not have any arrests for which a criminal charge is pending or convictions that could  
21 adversely affect the child or the ability of the person receiving payments to care for  
22 the child. A person receiving payments under sub. (3m) may not finally employ a  
23 person in a position in which that person would have regular contact with the child  
24 for whom those payments are being made or finally permit a person to be an adult  
25 resident until the county department or, in a county having a population of 500,000

or more, the department of health and family services receives information from the  
 department of justice indicating that the person's conviction record under the law of  
 this state is satisfactory according to the criteria specified in par. (g) 1. to 3. and the  
 county department or, in a county having a population of 500,000 or more, the  
 department of health and family services so advises the person receiving payments  
 under sub. (3m) or until a decision is made under par. (h) 4. to permit a person who  
 is receiving payments under sub. (3m) to employ a person in a position in which that  
 person would have regular contact with the child for whom payments are being made  
 or to permit <sup>the</sup> a person to be <sup>so employed or to be</sup> an adult resident and the county department or, in a  
 county having a population of 500,000 or more, the department of health and family  
 services so advises the person receiving payments under sub. (3m). A person  
 receiving payments under sub. (3m) may finally employ a person in a position in  
 which that person would have regular contact with the child for whom those  
 payments are being made or finally permit a person to be an adult resident  
 conditioned on the receipt of information <sup>stays by</sup> from the county department or, in a county  
 having a population of 500,000 or more, the department of health and family services  
<sup>from</sup> that the federal bureau of investigation <sup>indicating</sup> indicates that the person's <sup>arrest and</sup> conviction record  
 under the law of any other state or under federal law is satisfactory according to the  
 criteria specified in par. (g) 1. to 3.

SECTION 16. 48.57 (3p) (fm) 2m. of the statutes is amended to read:

48.57 (3p) (fm) 2m. A person receiving payments under sub. (3n) may  
 provisionally employ a person in a position in which that person would have regular  
 contact with the child for whom those payments are being made or provisionally  
 permit a person to be an adult resident if the person receiving those payments states  
 to the county department or, in a county having a population of 500,000 or more, the

does not include any arrest or conviction for which a  
 criminal charge is pending or conviction that could  
 adversely affect the child or the ability of the person  
 receiving payments to care for the child

~~does not include any arrest for which a criminal charge  
is pending or conviction that would adversely affect  
the child or the ability of the person receiving payments to care for~~

1 department of health and family services that, to the best of his or her knowledge,  
2 the employee or adult resident does not have any arrests for which a criminal charge  
3 is pending or convictions that could adversely affect the child or the ability of the  
4 person receiving payments to care for the child. A person receiving payment under  
5 sub. (3n) may not finally employ a person in a position in which that person would  
6 have regular contact with the child for whom those payments are being made or  
7 finally permit a person to be an adult resident until the county department or, in a  
8 county having a population of 500,000 or more, the department of health and family  
9 services receives information from the department of justice ~~relating to the person's~~  
10 indicating that the of the person arrest and conviction record under the law of this state ~~and that record indicates~~  
11 ~~either that the person has not been arrested or convicted no arrests for which a~~  
12 ~~criminal charge is pending or convictions or that the person has been arrested or~~  
13 ~~convicted an arrest for which a criminal charge is pending or a conviction but the~~  
14 director of the county department or, in a county having a population of 500,000 or  
15 more, the person designated by the secretary of health and family services to review  
16 arrest and conviction records under this subdivision determines ~~that the arrest and~~  
17 ~~conviction record is satisfactory because it does not include any arrest for which a~~  
18 ~~criminal charge is pending or conviction that is likely to adversely affect the child or~~  
19 ~~the long term kinship care relative's ability to care for the child and the county~~  
20 ~~department or department of health and family services so advises the person~~  
21 ~~receiving payments under sub. (3n).~~ A person receiving payments under sub. (3n)  
22 may finally employ a person in a position in which that person would have regular  
23 contact with the child for whom those payments are being made or finally permit a  
24 person to be an adult resident conditioned on the receipt of information from the  
25 county department or, in a county having a population of 500,000 or more, the

indicating 14 19 from

1 department of health and family services ~~that~~ the federal bureau of investigation  
 2 ~~indicates~~ that the person's arrest and conviction record under the law of any other  
 3 state or under federal law ~~is satisfactory because the conviction record~~ does not  
 4 include any arrest for which a criminal charge is pending or conviction that the  
 5 director of the county department or, in a county having a population of 500,000 or  
 6 more, the person designated by the secretary of health and family services to review  
 7 arrest and conviction records under this subdivision determines is likely to adversely  
 8 affect the child or the long-term kinship care relative's ability <sup>of the person receiving payments</sup> to care for the child.

NOTE: SECTIONS <sup>check</sup> through <sup>the purpose of determining eligibility</sup> limit the arrests that may be considered in <sup>conducting a</sup> criminal background ~~checks~~ for the kinship care program to arrests for which a criminal charge is pending.

the person has been convicted or penalized as follows

9 SECTION ~~17~~ 48.57 (3p) (g) (intro.) of the statutes is amended to read:

10 48.57 (3p) (g) (intro.) Except as provided in par. (h), the county department or,  
 11 in a county having a population of 500,000 or more, the department of health and  
 12 family services may not make payments to a person applying for payments under  
 13 sub. (3m) and a person receiving payments under sub. (3m) may not employ a person  
 14 in a position in which that person would have regular contact with the child for whom  
 15 those payments are being made or permit a person to be an adult resident if <sup>if</sup> any of  
 16 the following applies, and <sup>or penalty</sup> the county department or the department of health and  
 17 family services determines that the conviction record <sup>or penalty</sup> is likely to adversely affect the  
 18 child or the ability of the kinship care relative to care for the child: <sup>person applying for or receiving payments</sup>

NOTE: Section 48.57 (3p) (g) 1. to 3. <sup>convictions and penalties</sup> contains the list of crimes for which kinship care <sup>lists certain convictions and penalties</sup> payments must be denied. The listed crimes still apply, but this SECTION requires county <sup>a</sup> departments or DHFS to determine whether a conviction adversely affects the kinship care relative's ability to care for the child, <sup>LPS: leave "care" in</sup> in addition to determining that a relative has been convicted of a specified offense, before denying kinship care benefits.

19 SECTION ~~18~~ 48.57 (3p) (h) 1. of the statutes is amended to read:

based on the person's arrest or

conviction record

use  
twice

48.57 (3p) (h) 1. A person who is denied payments under sub. (3m) ~~for a reason~~  
~~specified in par. (g) 1., 2. or 3.~~ or a person who is prohibited from employing a person  
 in a position in which that person would have regular contact with the child for whom  
 payments under sub. (3m) are being made from permitting a person to be an adult  
 resident ~~for a reason specified in par. (g) 1., 2. or 3.~~ may request that petition the  
department for a review of the denial of payments or the prohibition on employment  
 or being an adult resident be reviewed under subd. 2. Review is unavailable if the  
 denial or prohibition occurred more than 45 days before submission of the petition  
 for review.

petitioner

SECTION ~~19~~ 48.57 (3p) (h) 2. of the statutes is repealed and recreated to read:

48.57 (3p) (h) 2. Upon receipt of a timely petition under subd. 1., the  
 department shall give the ~~applicant~~ reasonable notice and an opportunity for a fair  
 hearing. The department may make such additional investigation as it considers  
 necessary. Notice of the hearing shall be given to the ~~applicant~~ and to the county  
 department or subunit of the department whose ~~action or failure to act~~ denial or prohibition  
 of the petition. That county department or subunit of the department may be  
 represented at the hearing.

SECTION ~~20~~ 48.57 (3p) (h) 3. ~~(intro.), a. and c.~~ of the statutes ~~are~~ amended to  
 read:

48.57 (3p) (h) 3. ~~intro.)~~ The director of the county department, the person  
 designated by the governing body of a federally recognized American Indian tribe or  
 band or, in a county having a population of 500,000 or more, the person designated  
 by the secretary of health and family services shall review the denial of payments or  
 the prohibition on employment or being an adult resident to determine if the arrest  
and conviction record on which the denial or prohibition is based ~~includes any arrests~~



for which a criminal charge is pending, convictions or penalties that are likely to adversely affect the child or the ability of the kinship care relative to care for the child. In reviewing the denial or prohibition, the director of the county department, the person designated by the governing body of the federally recognized American Indian tribe or band or the person designated by the secretary of health and family services shall consider, but not be limited to, all of the following factors:

a. The length of time between the date of the arrest for which a criminal charge is pending, conviction<sup>(2)</sup> or of the imposition of the penalty and the date of the review.

c. Whether making an exception to the denial or prohibition would be in the best interests of the child.

SECTION ~~21~~ 48.57 (3p) (h) 4. of the statutes is repealed and recreated to read:

48.57 (3p) (h) 4. The department shall render its decision as soon as possible after the hearing and shall send a certified copy of its decision to the applicant and to the county department or subunit of the department whose action or failure to act is the subject of the petition. The decision of the department shall have the same effect as an order of the county department or subunit of the department whose action or failure to act is the subject of the petition. The decision shall be final, but may be revoked or modified as altered conditions may require. The department shall deny a petition for review or shall refuse to grant relief if any of the following applies:

a. The petitioner withdraws the petition in writing.

b. The petitioner abandons the petition. Abandonment occurs if the petitioner fails to appear in person or by a representative at a scheduled hearing without good cause, as determined by the department.

SECTION ~~22~~ 48.57 (3p) (h) 5. of the statutes is repealed.

21 - 17 -

arrest or

person's

arrest or

use twice

NOTE: Under SECTIONS through, if a person is denied kinship care payments on the basis of his or her conviction record or prohibited from employing a person or permitting an adult from living in the relative's home based on that person's conviction record, the person may petition the DHFS within 45 days of the denial or prohibition for review. The review must determine whether the conviction record will likely adversely affect the child or the kinship care relative's ability to care for the child. Upon receipt of a timely petition, DHFS must give the relative an opportunity for a fair hearing.

petitioner

person's

Section also limits arrests that may be considered in criminal background checks to arrests for which a criminal charge is pending.

of the person receiving payments

SECTION 24. 48.57 (3p) (hm) of the statutes is amended to read:

48.57 (3p) (hm) A county department or, in a county having a population of 500,000 or more, the department may not make payments to a person under sub. (3n) and a person receiving payments under sub. (3n) may not employ a person in a position in which that person would have regular contact with the child for whom payments are being made or permit a person to be an adult resident if the director of the county department or, in a county having a population of 500,000 or more, the person designated by the secretary to review arrest and conviction records under this paragraph determines that the person has any arrest for which a criminal charge is pending or conviction that is likely to adversely affect the child or the long-term kinship care relative's ability to care for the child.

check

purpose of determining

eligibility

in conducting a

NOTE: SECTION limits the arrests that may be considered for criminal background checks for the long-term kinship care program to arrests for which a criminal charge is pending.

SECTION 24. 48.57 (3r) of the statutes is created to read:

48.57 (3r) If the amounts in the appropriation under s. 20.435 (3) (kc) are insufficient to provide payments under sub. (3m) (am) (intro.) or (3n) (am) (intro.) to all persons who are eligible to receive those payments, the department may request the secretary of administration under s. 16.515 to supplement that appropriation for the purpose of increasing funding for those payments.

1 Notwithstanding s. 16.515<sup>✓</sup> (1), the secretary of administration may supplement the  
2 appropriation under s. 20.435 (3)<sup>✓</sup> (kc) if all of the following occur:

3 (a) The secretary of administration determines that the amounts in the  
4 appropriation are insufficient to provide payments under sub. (3m) (am)<sup>✓</sup> (intro.) or  
5 (3n) (am) (intro.)<sup>✓</sup> to all persons who are eligible to receive those payments.

6 (b) The joint committee on finance either does not schedule a meeting for the  
7 purpose of reviewing the proposed supplementation within 14 working days after the  
8 secretary of administration notifies the committee of the proposed supplementation  
9 or, if the committee schedules a meeting for the purpose of reviewing the proposed  
10 supplementation, the committee approves the proposed supplementation.

*Ans (27) and long-term kinship care payments those appropriated for those payments*  
NOTE: SECTION 27 permits DHFS to request the secretary of administration to provide supplemental funding for ~~the~~ kinship care ~~program~~ if the amount of funding is insufficient to provide kinship care and long-term kinship care payments to all persons who are eligible to receive those payments. The joint committee on finance must approve any supplemental funding proposed by the secretary of administration.

*Insert 18-11*  
11 SECTION ~~25~~<sup>✓</sup> 48.979 of the statutes is created to read:

12 48.979 Authorization to consent to ~~medical~~<sup>health</sup> services. (1) DEFINITIONS. In  
13 this section:

14 (a) "Caregiver" means an individual who has attained 18 years of age with  
15 whom <sup>a</sup> ~~the~~ child resides. *of health and family services*

16 (c) (b) "Health care provider" means any person licensed, registered, permitted,  
17 or certified by the department or by the department of regulation and licensing to  
18 provide ~~medical~~<sup>health</sup> services in this state.

19 (d) <sup>Health</sup> (c) "Medical services" means any ordinary or emergency ~~medical or dental~~<sup>health</sup> care,  
20 treatment, service, or procedure to maintain, diagnose, or treat a physical or mental  
21 condition.

*(b) "Health care facility" has the meaning given in s. 155.01 (b).*

AUTHORIZING

HEALTH

(2) DESIGNATING A CAREGIVER TO CONSENT TO MEDICAL SERVICES. (a) A parent may authorize a caregiver to consent to medical services for his or her child by completing a medical services consent form.

(b) A valid medical services consent form shall be all of the following:

1. In writing.

2. Dated and signed by the parent and the caregiver whom the parent is designating to consent to medical services for the child.

3. Voluntarily executed.

(c) A medical services consent form under this section shall remain in effect for the period of time specified on the form or, if no time period is specified, for one year from the date it is executed, unless it is revoked or otherwise made invalid earlier.

(d) Nothing in this section shall be construed to make invalid other instruments that are voluntarily executed by a parent authorizing an individual or other entity to consent to medical services for the parent's child.

(3) EFFECT OF MEDICAL SERVICES CONSENT FORM; FORM. (a) Unless the medical services consent form otherwise provides, a caregiver who is known to the health care provider to be available to consent to medical services for the child has priority over other individuals other than a parent to make medical services decisions as provided in the medical services consent form. However, the medical services consent form does not take priority over a court order or letter of guardianship specifying authority to make medical services decisions.

(b) The department shall prepare the medical services consent form and accompanying information. The department shall include, in information accompanying the form, at least the statutory definitions of terms used in the form. The department shall prepare the form and accompanying information in English,

HEALTH

Spanish, and other languages spoken by a significant number of state residents, as determined by the department. The department shall make the medical services consent form available at no charge on the Internet. The medical services consent form prepared by the department shall be in the following form:

**MEDICAL SERVICES CONSENT**

**Use of form:** Use of this form is voluntary, but completion will aid caregivers in ensuring that appropriate and timely health care is provided. The form is to be completed by the parent of a child who is being cared for by another adult.

**Instructions:** If additional space is needed, attach a separate sheet or use reverse side of this form.

Name - Parent (Last, First, MI)

Name - Child (Last, First, MI) Birthdate - Child (mm/dd/yyyy)

Name - Caregiver (Last, First, MI)

I hereby ~~give consent to~~ <sup>authorize</sup> my child's caregiver to do the following:**A. Routine Medical Services Consent and Exclusions**

~~For purposes of routine medical services for the above-named child, provide routine medical services~~ including medical and dental examinations and nonemergency prescribed treatments <sup>for example,</sup> (tooth repair, immunizations, medications), with the following exceptions: (If there are no exceptions, write "none".)

Center AllCare  
AUTHORIZATION TO CONSENT  
TO HEALTH SERVICES

Health**B. Emergency ~~Medical~~ Services Consent and Exclusions**

In case of a medical emergency involving the above named child, arrange for emergency ~~medical~~ health services using the following procedures:

1. A reasonable effort will be made to contact me and secure my consent for needed ~~medical~~ emergency health services, including surgical procedures.

2. If I cannot be located within a reasonable time, the child's caregiver has the authority to consent to emergency ~~medical~~ health services, including surgery performed.

3. All ~~medical~~ health services will be under the direction of a licensed dental care provider or physician or other licensed provided professional as appropriate. health care provider to consent to emergency health services as provided above

I have no objections to the caregiver exercising his or her authority, with the following exceptions: (If there are no exceptions, write "none")

.....  
.....  
.....  
.....

**C. Parent Information**

Address - Home (Street, City, State, Zip Code) Telephone Number - Home

Address - Work (Street, City, State, Zip Code) Telephone Number - Work

Address - Other (Specify) Telephone Number - Other

Address - Other (Specify) Telephone Number - Other

SIGNATURE - Parent

Date Signed

**D. Caregiver Information and Statement**

Address - Home (Street, City, State, Zip Code) Telephone Number - Home

Address - Work (Street, City, State, Zip Code) Telephone Number - Work

21-25

1 I intend to make ~~medical~~ <sup>health</sup> services decisions for the above-named child  
 2 consistent with what I and the child's health care providers believe is in the child's  
 3 best interest and consistent with any <sup>other</sup> wishes or beliefs I am aware <sup>of</sup> the child's parent  
 4 ~~that~~ <sup>of which I am aware</sup>.

SIGNATURE - Caregiver

Date Signed

6 This medical services consent form shall remain in effect until \_\_\_\_ (date). (If  
 7 no date is specified, the form will remain in effect for one year from the date it is  
 8 signed by the parent, unless it is revoked or becomes invalid earlier.)

9 (4) REVOCATION OF MEDICAL SERVICES FORM. (a) A parent may revoke ~~and~~

10 ~~invalidate~~ <sup>health</sup> a ~~medical~~ <sup>health</sup> services consent form at any time by doing any of the following:

11 1. Canceling, defacing, obliterating, burning, tearing, or otherwise destroying  
 12 the ~~medical~~ <sup>health</sup> services consent form.

13 2. Executing a statement, in writing, that is signed and dated by the parent,  
 14 expressing the parent's intent to revoke the ~~medical~~ <sup>health</sup> services consent form.

15 3. Executing a subsequent ~~medical~~ <sup>health</sup> services consent form.

16 (b) A ~~medical~~ <sup>health</sup> services consent form is not valid if the minor no longer resides  
 17 with the ~~parent~~ caregiver.

18 (c) If a caregiver knows that the instrument that ~~named~~ <sup>authorized</sup> him or her to make  
 19 ~~medical~~ <sup>health</sup> services decisions for a child has been revoked <sup>(stet)</sup> ~~or is no longer valid~~ <sup>he or she</sup>

20 shall communicate this fact to any health care provider for the child that ~~he or she~~ <sup>the caregiver</sup>

21 knows has a copy of the ~~medical~~ <sup>health</sup> services consent form.

22 (d) The child's health care provider shall, upon notification of revocation <sup>(stet)</sup> ~~or~~

23 ~~invalidity~~ <sup>health</sup> of the ~~medical~~ <sup>health</sup> services consent form, record in the child's medical record

24 the time, date, and place of the notification to the health care provider of the

25 revocation. <sup>or invalidity</sup>

under a health

(5) DUTIES AND IMMUNITIES. (a) No health care facility or health care provider may be charged with a crime, held civilly liable, or charged with unprofessional conduct for any of the following in providing ~~medical~~ <sup>health</sup> services ~~pursuant to a medical~~ <sup>or authorized under health</sup> services consent form:

1. ~~Complying~~ <sup>health</sup>, in the absence of actual knowledge of a revocation, with the terms of a ~~medical~~ <sup>health</sup> services consent form that is in compliance with this section or the decision of a caregiver that is made under a ~~medical~~ <sup>health</sup> services consent form that is in compliance with this section.

2. Acting contrary to or failing to act on a revocation of a ~~medical~~ <sup>health</sup> services consent form, unless the health care facility or health care provider has actual knowledge of the revocation.

3. Acting contrary to or failing to act on the ~~medical~~ <sup>health</sup> services decision of a parent, unless the ~~health~~ <sup>health</sup> care facility or health care provider has actual knowledge of the parent's ~~medical~~ <sup>health</sup> services decision.

(b) In the absence of actual notice to the contrary, a health care facility or health care provider may presume that a parent was authorized to execute the ~~medical~~ <sup>health</sup> services consent form under the requirements of this section and that the form is valid.

(c) No caregiver may be charged with a crime or held civilly liable for making a decision in good faith under a ~~medical~~ <sup>health</sup> services consent form that is in compliance with this section.

(6) PENALTIES. (a) Whoever knowingly falsifies or forges a ~~medical~~ <sup>health</sup> services consent form with intent to create the false impression that a person other than the caregiver has been designated to consent to ~~medical~~ <sup>health</sup> services for a child is subject to a forfeiture not to exceed \$200.



(b) Whoever gives or attempts to give consent for ~~medical~~ <sup>health</sup> services based on a ~~medical~~ services consent form that the individual knows has been executed without the voluntary consent of the parent <sup>use twice</sup> ~~or~~ that the individual knows has been forged or substantially altered without the authorization of the child's parent, with the intent to act contrary to the parent's wishes may be fined not more than \$500 or imprisoned for not more than 30 days <sup>29</sup> or both.

NOTE: SECTION <sup>health</sup> creates a new section in the Children's Code that allows a parent to complete a form that gives an adult with whom a child lives the authority to make ~~medical~~ <sup>health</sup> services decisions for the child on behalf of the parent.

This SECTION includes a ~~medical~~ <sup>health</sup> services consent form. The form must be signed by the parent and by the caregiver. DHFS must prepare the ~~medical~~ <sup>health</sup> services consent form and accompanying information and make the form available, at no charge, on the Internet. The form must be prepared in English, Spanish, and any other language <sup>that</sup> DHFS determines is spoken by a significant number of state residents.

A valid ~~medical~~ <sup>health</sup> services consent form gives the caregiver the authority to make routine and emergency health care decisions for the named child. A contravening decision by a parent, however, supersedes the caregiver's decision.

This SECTION allows a parent to revoke a ~~medical~~ <sup>health</sup> services consent form. Also, a form is not valid if the child no longer lives with the caregiver.

This SECTION provides immunity from liability for health care providers who act in good faith in complying with a ~~medical~~ <sup>health</sup> services consent form. In addition, a caregiver may not be liable for making a decision in good faith under a valid ~~medical~~ <sup>health</sup> services consent form.

The SECTION provides penalties for falsifying a ~~medical~~ <sup>health</sup> services consent form and for attempting to give consent under a forged form with the intent of acting contrary to the child's parent's wishes.

SECTION ~~25~~ <sup>of the child's parents</sup> 49.155 (5) of the statutes is <sup>health</sup> amended to read:

49.155 (5) ~~LIABILITY FOR PAYMENT~~ <sup>or revoked</sup> <sup>renumbered 49.155 (5)(a) and</sup> (a) <sup>plan</sup> An individual is liable for the percentage of the cost of the child care specified by the department in a printed copayment schedule except as provided in pars. (b), (c), and (d).

(b) An individual who is under the age of 20 and is attending high school or participating in a course of study meeting the standards established under s. 115.29

(4) for the granting of a declaration of equivalency to high school graduation may not

is that the individual knows he has been revoked,

change to RA

be determined liable for more than the minimum copayment amount for the type of child care received and the number of children receiving child care.

SECTION ~~27~~ 49.155 (5) (c) and (d) of the statutes are created to read:

49.155 (5) (c) An individual who ~~is a relative of the child is not liable for a copayment for a child on behalf of whom the individual is receiving payments under~~

s. 48.57 (3m) or (3n). *for providing care and maintenance for a child is not liable for a copayment for the child*

(d) An individual who the department specifies, by rule, is not liable for a copayment.

NOTE: SECTIONS ~~28~~ <sup>31</sup> and <sup>31</sup> create <sup>are</sup> exceptions to the requirement that an individual who receives a child care subsidy is liable for a percentage of the cost of the child care. Under SECTION <sup>31</sup>, a kinship care relative <sup>an exception</sup> is not liable for a percentage of the cost. In addition, a person who the department of workforce development specifies is not liable for a copayment is not liable under SECTION <sup>31</sup>. *and a* *for a copayment*

SECTION ~~28~~ 880.08 (3) (am) (intro.) of the statutes is amended to read:

880.08 (3) (am) (intro.) When the proposed ward is a minor, notice shall be given as provided in s. 879.05 to all of the following persons, if applicable, except that notice required to be given by publication shall be published as a class 1 notice:

NOTE: SECTION <sup>32</sup> modifies current law so that notice of a hearing to appoint a guardian for a minor must be published in a newspaper as a class 1 notice (i.e., published once) if personal service is not possible. Under current law, such notice must be published as a class 3 notice (i.e., published 3 times).

SECTION ~~29~~ Nonstatutory provisions.

(1) GUARDIANSHIP AND LEGAL CUSTODY OF MINORS. The joint legislative council is requested to study state laws regarding guardianship and legal custody of minors and the rights and responsibilities of guardians and legal custodians. If the joint legislative council conducts the study, the joint legislative council shall report its findings, conclusions, and recommendations to the legislature in the manner provided under section 13.172 (2) of the statutes by January 1, 2005.

of the legislature

1 (2) The department of health and family services shall study methods to  
2 manage funding for kinship care payments in order to minimize the need for waiting  
3 lists for kinship care payments. The department shall submit a report summarizing  
4 the results of the study ~~to the chief clerk of each house of the legislature for~~  
5 ~~distribution~~ to the appropriate standing committees in the manner provided under  
6 section 13.172 (3) of the statutes by June 30, 2004.

NOTE: SECTION 23 requests the Joint Legislative Council to study state laws regarding guardianship and legal custody of minors and the rights and responsibilities of guardians and legal custodians.

SECTION 33 also requires DHFS to study methods to manage funding for kinship care payments in order to minimize the need for waiting lists for payments and to report on the results of its study to the appropriate standing committees of the legislature by June 30, 2004.

7 (END)

O-Note